

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 1:22-CR-41
(Judge Kleeh)

ERICA TOLLIVER,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY [ECF NO. 15], ACCEPTING GUILTY PLEA,
AND SCHEDULING SENTENCING HEARING

On June 30, 2022, the Defendant, Erica Tolliver ("Tolliver"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of **GUILTY** to Counts One and Two of the Information, charging her in Count One with Obtaining Controlled Substances by Fraud or Deceit, in violation of 21 U.S.C. § 843(a)(3), and in Count Two with Unlawful Possession of Oxycodone, in violation of 21 U.S.C. § 844(a).

This Court referred Tolliver's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted. Tolliver stated that she understood that the magistrate judge is

USA v. TOLLIVER

1:22-CR-41

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY [ECF NO. 15], ACCEPTING GUILTY PLEA,
AND SCHEDULING SENTENCING HEARING

not a United States District Judge, and Tolliver consented to pleading before the magistrate judge.

Based upon Tolliver's statements during the plea hearing and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Tolliver was competent to enter a plea, that the plea was freely and voluntarily given, that she understood the charges against her and the consequences of her plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty* ("R&R") [ECF No. 15] finding a factual basis for the plea and recommending that this Court accept Tolliver's plea of guilty to Counts One and Two of the Information.

The magistrate judge **released** Tolliver on the terms of the Order Setting Conditions of Release [ECF No. 14].

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Tolliver nor the Government filed objections to the R&R.

USA v. TOLLIVER

1:22-CR-41

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY [ECF NO. 15], ACCEPTING GUILTY PLEA,
AND SCHEDULING SENTENCING HEARING

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [ECF No. 15], provisionally **ACCEPTS** Tolliver's guilty plea, and **ADJUDGES** her **GUILTY** of the crimes charged in Counts One and Two of the Information.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Tolliver, and prepare a presentence investigation report for the Court;

2. The Government and Tolliver shall each provide their narrative descriptions of the offense to the Probation Officer by **July 29, 2022**;

3. The presentence investigation report shall be disclosed to Tolliver, her counsel, and the Government on or before **September 13, 2022**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

USA v. TOLLIVER

1:22-CR-41

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY [ECF NO. 15], ACCEPTING GUILTY PLEA,
AND SCHEDULING SENTENCING HEARING

4. Counsel may file written objections to the presentence investigation report on or before **September 27, 2022**;

5. Counsel's responses to objections to the presentence investigation report shall be filed on or before **October 4, 2022**;

6. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **October 18, 2022**; and

6. Counsel may file any written sentencing memoranda or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **October 31, 2022**.

The Court further **ORDERS** that prior to sentencing, Tolliver's counsel shall review with her the revised Standard Probation and Supervised Release Conditions adopted by this Court on November 29, 2016, pursuant to the standing order entered by Chief Judge Groh, In Re: Revised Standard Probation and Supervised Release Conditions, 3:16-MC-56.

The Court will conduct the **Sentencing Hearing** for Tolliver on **November 17, 2022**, at **1:30 P.M.**, at the **Clarksburg, West Virginia**, point of holding court. If counsel anticipates having multiple witnesses or an otherwise lengthy sentencing hearing, please

USA v. TOLLIVER

1:22-CR-41

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY [ECF NO. 15], ACCEPTING GUILTY PLEA,
AND SCHEDULING SENTENCING HEARING

notify the Judge's chamber staff so that an adequate amount of time can be scheduled.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: July 27, 2022

Handwritten signature of Thomas S. Klee in black ink.

THOMAS S. KLEE, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA